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**Before the
FEDERAL COMMUNICATIONS COMMISSION**

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In Re)
)
Amendment of Part 74 of the)
Commission's Rules With)
Regard to Instructional)
Television Fixed Service)

MM Docket No. 93-24

COMMENTS OF THE CLARENDON FOUNDATION

Clarendon Foundation is a national filer for ITFS Licenses. We also provide services to wireless cable operators in recruiting local schools and colleges to apply for ITFS Licenses and enter into airtime leases the operator. We have been involved in ITFS since 1991, and have worked in 34 markets in over 20 states.

We support the Commission's proposal to adopt a window filing system, and offer the following comment on how to minimize filing practices that impede efficient processing. Our comment concerns frequency speculators.

This comment reflects our experience in coordinating instructional television services for wireless operators. We qualify the Operators for whom we work so as to avoid involvement in frequency speculation. This is a particularly harmful practice, because the speculator increases the costs of constructing a system, and takes the profit realized out of the community. Often the educators are one of the losers, because the operator which actually builds the system has less money for ITFS equipment and for compensation for airtime leasing.

We propose the following requirements as an efficient means of deterring frequency speculation:

1. The Excess Capacity Airtime Lease agreement would be required to contain the following assurances:
 - a. The Operator intends to construct a wireless cable system.
 - b. The Operator has acquired commercial MDS licenses for the particular area.

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- c. The Operator has reasonable assurance of financing construction and operation of the ITFS system.
- 2. An Excess Capacity Airtime Lease agreement with these certifications would be an eligibility requirement. Applicants who have only entered into negotiations or verbal understandings with an Operator would not be entitled to file. (This is a change from Paragraph 9 in Section II of Form 330.) Of course, applicants could still file independently by indicating that funding is available from its own resources, or is being provided by grant or the NTIA program. Such an applicant could not rely upon assistance from an Operator in preparing the application. Instead, it would be an independent applicant, which could enter into an agreement with one of the interested Operators after a construction permit is granted. A bidding procedure could be instituted.

The requirement of acquiring commercial licenses before filing for ITFS licenses would deter Operators from applying for substantially more facilities than they realistically could construct. Parties would be limited only on the basis of the number of commercial licenses they could acquire. This is a practical and commercially viable means for preventing premature filings. A party would not be eligible to apply for any market based solely upon plans to develop it sometime in the future.

Obviously, this is a more efficient way for the FCC to prevent overfiling than a detailed review of financial ability. It would **not** prevent competition between operators in a given market, since different companies may have acquired channel groups in the same area.

When an Operator has already acquired the commercial licenses, it is in a very good position to obtain financing either through bank loans or investors. The commercial license certification is an eligibility requirement that would give the FCC a reasonably sufficient indication, in itself, that Operators are not intending to abuse the system.

As enforcement, the Commission could refuse requests for extensions of a construction permit for applications relying on excess capacity leases, and allow the filing of petitions to deny. Operators which falsely certified financial capability could be challenged by other interested parties. This would also account for instances where an Operator had sufficient financing when the application was filed for, but no longer is in a position to construct the ITFS facilities. This also benefits the educators, since it is a powerful incentive for timely construction and commencement of operations of ITFS facilities.

Even though there is no public notice, operators and speculators may obtain knowledge that a particular company is seeking ITFS applicants in a given market. The commercial license requirement would deter speculators from overfiling on the legitimate operator who intends to construct a system.

Speculators often enter markets late. A real developer will be working constantly on getting its systems ready for filing. Speculators are more likely to jump into markets once the Commission announces the opening of a filing window. Consequently, speculators are more likely to be in the negotiation stage when the window is ready to close. The Commission could minimize this practice by requiring a finalized Excess Capacity Airtime Lease to be filed with the application.

Application Caps on nonlocal filers are artificial and do not really address the underlying problems discussed above. The filer is not abusing the process; it is the operators that engage in frequency speculation. The filer has a commitment to local schools to provide instructional television services. This commitment remains even if the system is sold by the initial operator. Nonlocal filers are often in a position, because of their expertise and economies of scale, to provide better services to educators.

Respectfully submitted,

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